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PART V:

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

■

FEDERAL PROCUREMENT REGULATIONS SYSTEM

Miscellaneous Amendments

Title 41—Public Contracts and Property Management

SUBTITLE A—FEDERAL PROCUREMENT REGULATIONS SYSTEM

CHAPTER 18—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[PRD No. 76-10]

Miscellaneous Amendments

NOTE.—The Office of the Federal Register (OFR), in a combined effort with the National Aeronautics and Space Administration (NASA), has proposed acceptance of the agency's 1976 edition of the NASA Procurement Regulations (NASA PR) for publication in the Code of Federal Regulations (CFR). Previously, the OFR has edited the NASA version to conform with the CFR codification system. NASA has agreed to provide the OFR with a magnetic tape to be used in the publication of the CFR.

A document announcing adoption of the NASA PR will be published in the FEDERAL REGISTER at the time that NASA submits, and OFR accepts the magnetic tape.

Pending the adoption of the basic NASA PR's, the following PRD No. 76-10 is being published at this time in order to give notice of specific amendments. Since references in this document are to paragraphs of the NASA PR, the OFR has prepared the following table. Entries in the left column are in NASA PR codification, while entries in the right column show the corresponding CFR units being amended by this PRD.

PRD	*CFR*
1.304-1	18-1.304-1.
1.351	18-1.351.
3.501	18-3.501.
3.805-1	18-3.805-1.
5.5101	18-5.5101.
7.104-9	18-7.104-9.
7.104-50	18-7.104-50.
7.104-61	18-7.104-61.
7.204-9	18-7.204-9.
7.204-50	18-7.204-50.
7.204-61	18-7.204-61.
7.303-50	18-7.303-50.
7.303-61	18-7.303-61.
7.350-3	18-7.350-3.
7.403-50	18-7.403-50.
7.403-61	18-7.403-61.
7.452-50	18-7.452-50.
7.452-61	18-7.452-61.
7.460-9	18-7.460-9.
7.705-1	18-7.705-1.
7.705-13	18-7.705-13.
7.902-58	18-7.902-58.
Part 9, Subpart 2	Chapter 18, Part 9, Subpart 2.

The NASA PR publication is a loose leaf version that is periodically updated by Procurement Regulation Directives (PRD's). Changes will either be in the form of "pen and ink changes" or "replacement pages". "Pen and ink changes" are a list of changes to be made by the subscribers in their individual copies. "Replacement pages" have new or revised material worked into the NASA PR text. Subscribers then substitute the new page for the old. The replacement pages contain not only the new text, but also the unaffected portions of the old text. A vertical bar on the side indicates the material which is new or revised.

The following will show the correlation of NASA PR terminology and CFR terminology:

NASA PR	CFR
Regulation	Chapter
Part	Part
Subpart	Subpart
Paragraph	Section

The numbering of individual paragraphs and pages is not necessarily consecutive, and is designed to permit subsequent insertion of additional paragraphs and pages within the appropriate Part and Subpart. The number of a particular paragraph indicates the Part and Subpart where it is set forth, and also indicates whether it is subordinate to a preceding paragraph. The first portion of a paragraph number indicates the Part, and the first digit of the second portion (preceded by a decimal) indicates the Subpart, in which the particular paragraph is set forth; thus, paragraph 1.109 indicates Part 1, Subpart 1, paragraph 9. When the number of a paragraph ends with a digit preceded by a dash (as 1.109-2), this indicates that it is a part of the basic paragraph (as 1.109). The scope of any Part, when given, will be set forth in a separate introductory paragraph, the second portion of which number will be 000 (as 9.000); and the scope of any Subpart, when given, will be set forth in a separate paragraph at the beginning of that Subpart but with the second portion of its numbering being 100, 200, 300, etc., depending on the number of the Subpart (for example, paragraph 1.100 sets forth the scope of Subpart 1 of Part 1). The first digit of the number of a particular page indicates the Part to which the page relates. To convert the NASA numbering system to the CFR numbering system, an 18- should be placed before each paragraph designation. For example: 1.109 in the NASA regulations would become 18-1.109 under the CFR numbering system.

The numbering for the pages in NASA PR can be found in either the upper left-hand or right-hand corner. Such a page number might read "9-2:1". This indicates that it is Part 9, Subpart 2, page 1 of that particular subpart. A series of numbers also appears along the bottom of the pages. When on an even page, it indicates the subpart or paragraph that begins on that page. When on an odd page, it indicates the last subpart or paragraph that begins on that page.

This NASA Procurement Regulation Directive as issued by the Assistant Administrator for Procurement, NASA Headquarters, under authority delegated by the Administrator (NMD/A 5101.8E) pursuant to the National Aeronautics and Space Act of 1958 (Public Law 85-568, 72 Stat. 426).

NASA Procurement Regulation material published in this Directive is effective January 3, 1977; but compliance with this material is authorized upon receipt hereof.

Comments regarding this revision may be submitted to Assistant General Counsel for Patent Matters (Code GP), Office of General Counsel, NASA Headquarters, Washington, DC 20546.

DATA AND COPYRIGHTS

Part 9, Subpart 2 is revised. This revision (i) provides a basic rights in data clause for use in both research and development and supply contracts; (ii) includes provisions under which a contractor's privately developed computer software may be protected; (iii) provides for limited access to a contractor's trade secrets and/or privately developed computer software under prescribed circumstances; and (iv) makes other general modifications to data clauses and procedures for use thereof.

Accordingly, the NASA PR is revised as set forth below:

(a) Paragraph 3.501(b)(xlv) is revised to read as set forth in attached replacement page number 3-5:4.

(b) A new paragraph 3.501(b)(lxxxv) is inserted to read as set forth in attached replacement page number 3-5:11.

(c) Part 9, Subpart 2, is revised to read as set forth in attached replacement pages numbered 9-2:1—9-2:18.

PEN AND INK CHANGES

The following Pen and Ink Changes will be reflected in the 1976 Edition of the NASA PR, which is currently under preparation.

(a) In paragraph 1.304-1 change the term "Proprietary Data" wherever it appears, including the title, to "Protectible Data."

(b) In paragraphs 1.351(c)(i) and 5.5101 (a) and (b) change the referenced paragraph number "9.204-52" to read "9.203-6."

(c) Delete the current paragraph in 3.805-1(b)(vii) and insert the following:

(vii) Where it is considered necessary for NASA to have access during contract performance to proposal technical data which has been qualified by the offeror as protectible data, and will be excluded from the clause in 9.203-7(a), such access may be obtained under the provisions of 9.203-7(b).

(d) Delete current paragraphs in 7.104-9 and 7.204-9 and insert the following:

Rights in Data. If data is to be furnished NASA under the contract, insert the appropriate "Rights in Data" clause or clauses as prescribed in 9.203.

(e) Delete the text under paragraphs 7.104-50, 7.204-50, 7.303-50, 7.403-50 and 7.452-50, and insert the following:

Optional Data Requirements. In accordance with the requirements of 9.203-2, insert the clause set forth therein.

(f) Change paragraphs 7.104-61, 7.204-61, 7.303-61, 7.403-61, 7.452-61, 7.705-13 and 7.902-58 to read as follows:

Rights in Data for Potentially Hazardous Items. In accordance with the re-

quirements of 9.203–6, insert the clause specified therein.

(g) In paragraph 7.705–1, change the first sentence to read "In accordance with the requirements of 9.203, insert the appropriate clause or clauses prescribed therein."

(h) Change paragraphs 7.350–3 and 7.460–9 to read:

Rights in Data. Insert the appropriate clause as prescribed by 9.203.

STUART J. EVANS,
Assistant Administrator for Procurement.

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(xxxiv) requirement that information be furnished with respect to any Government-owned facilities, industrial equipment, or special tooling intended to be used in the performance of the contract the value thereof, identification of the Government contract under which acquired, rental provisions, and other relevant information;

(xxxv) requirement that additional facilities to be provided by the Government be described and identified by category, such as "Land," "Buildings," "Machinery," "Equipment," etc., (see 13.601-1 for format);

(xxxvi) requirement that additional special test equipment to be provided by the Government be described and its intended use, estimated cost, and proposed location be shown;

(xxxvii) clear statement of option provisions (see Part 1, Subpart 15 and 12.1050);

(xxxviii) requirement for the contractor to furnish data, when the requirement for data is known in advance of making the contract and delivery of data is definitely to be required in the performance of the contract (see Part 9, Subpart 2 for detailed instructions and required clauses; see also 3.852-3);

(xxxix) special provisions necessary for the particular procurement, relating to such matters as patents, data, copyrights (see Part 9); liquidated damages (see 1.310); progress payments (see 7.104-35);

(xl) requirement for information to be furnished on management engineering and consultant services specified in 4.5205-2;

(xli) when NASA Financial Management Reporting is to be applicable to the procurement (7.104-53), offerors will be advised that the successful contractor will be required to report contract cost/manpower on a regular basis as set forth in NASA Handbook 9501.2A, "Procedures for Contractor Reporting Correlated Cost and Performance Data."

(xlii) a statement as follows:

UNNECESSARILY ELABORATE CONTRACTOR'S PROPOSALS
(NOVEMBER 1965)

Unnecessarily elaborate brochures or other presentations beyond those sufficient to present a complete and effective proposal are not desired and may be construed as an indication of the offeror's lack of cost consciousness. Elaborate art work, expensive paper and bindings and expensive visual or other presentation aids are neither necessary nor desired.

The above statement shall be appropriately modified where included in a request for quotations;

(xliii) if the contract is to be conditioned on the availability of funds, a clear statement of such condition (see 1.318);

(xliv) requirement for submission of a proposed "Make or Buy" program (see Part 3, Subpart 9);

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(xlv) In accordance with the policies of 1.304-2(d) and 9.202-2(d) and the procedures of 9.202-3(a) the following shall be included in all requests for proposals:

TREATMENT OF TECHNICAL DATA

(a) The proposal submitted in response to this request may contain technical data which the offeror, or his subcontract offeror, does not want used or disclosed for any purpose other than evaluation of the proposal. The use and disclosure of any such technical data may be so restricted, provided the offeror marks the cover sheet of the proposal with the following Notice, specifying the pages of the proposal which are to be restricted in accordance with the conditions of the Notice. The Government assumes no liability for disclosure or use of unmarked technical data and may use or disclose such data for any purpose.

NOTICE

Technical data contained in pages _____ of this proposal shall not be used or disclosed, except for evaluation purposes, provided that if a contract is awarded to this submitter as a result of or in connection with the submission of this proposal, the Government shall have the right to use or disclose this technical data to the extent provided in the contract. This restriction does not limit the Government's right to use or disclose technical data obtained from another source without restriction.

(b) Offerors are futher advised that should a contract be awarded on a proposal submitted in response to this RFP, it is NASA policy, in consideration of the award, to obtain unlimited rights for the Government to the technical information contained in the proposal unless the prospective contractor establishes to the contracting officer's satisfaction that portions of the technical information qualifies as "protectible data" as defined in NASA PR 9.201(d), or that portions of such technical information do not relate directly to or will not be utilized in the work to be funded under the contract. In such instances the established information will be excluded from the Government rights by inserting the appropriate proposal page numbers in the "Rights to Proposal Data (Technical)" clause (NASA PR 9.203-7) included in the contract. The responsibility, however, of raising the question of possible exclusion of such technical information and qualifying it rests with the prospective contractor. Financial and business information contained in the proposal shall remain under the policy of NASA PR 1.304-4.

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(xlvi) Requests for Proposal which will result in the placement of rated orders or Authorized Controlled Material Orders (see 1.307) shall contain the following statement.

Contracts or purchase orders to be awarded as a result of this solicitation shall be assigned a (DX or DO as appropriate) rating or DMS allotment number (as appropriate) in accordance with the provisions of BDC Regulation 2 and/or DMS Regulation 1.

(xlvii) /Reserved/

(xlviii) if leases are involved, the facilities nondiscrimination paragraph set forth in 1.350-4;

(xlix) when the use of Automatic Data Processing Equipment is applicable to the procurement (see 3.804-2(c)(2) and Part 3, Subpart 11), inclusion of the following provision:

"The Government reserves the right to require the preparation and submission of feasibility and lease versus purchase studies by the successful contractor if the use of Automatic Data Processing Equipment is proposed."

(l)(A) In accordance with 3.1203(a), the following notice:

DISCLOSURE STATEMENT-COST ACCOUNTING PRACTICES AND CERTIFICATION (JANUARY 1976)

Any contract in excess of $100,000 resulting from this solicitation, except (i) when the price negotiated is based on: (A) established catalog or market prices of commercial items sold in substantial quantities to the general public, or (B) prices set by law or regulation, or (ii) are otherwise exempt (see 4 CFR 331.30(b)) shall be subject to the requirements of the

/Next page is 3-5:5/

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(lxxxiv) The certification of Minority Business Enterprise required by 1.332-1(e).

(lxxxv) In accordance with the policy of 9.202-2(b) and the procedures of 9.202-3(c) the following statement shall be included in all requests for proposals:

IDENTIFICATION OF PROTECTIBLE DATA

(This provision is applicable only if the "Rights in Data-General" clause of NASA PR 9.203-3 is to be included in the contract)

This Request for Proposal (RFP) contains an identification of known requirements for data to be furnished NASA under the proposed contract. Should any of this data involve a proposer's protectible data as defined in the "Rights in Data-General" clause (NASA PR 9.203-3), the clause permits the Contractor to meet the requirements for data by furnishing form, fit, and function data in lieu of its protectible data. This withholding technique is the primary means by which the Contractor may protect its equitable position in its protectible data.

While NASA normally can achieve its contractual objectives with the use of form, fit, and function data in lieu of protectible data, there are circumstances where its needs require access to protectible data. In such instances appropriate provisions may be included in the "Rights in Data" clause to provide for the delivery of protectible data under restricted rights or limited rights conditions.

To provide visibility, and as an aid in determining whether a real need exists for NASA access to protectible data, proposers shall state in the proposal that the contract requirements for data have been reviewed, and further, shall either (1) state that none of the required data qualifies as protectible data, or (2) identify which of the required data qualifies as protecible data.

If it be determined that access is required to any protectible data so identified, then NASA intends to include paragraphs (f) and/or (g) of NASA PR 9.203-2(b) and (c) to the "Rights in Data" clause.

(c) In addition to the information specified in (b) above, for contracts in excess of $1,000,000 the request for proposal should contain requirements for the following information to be furnished by the offeror in his proposal, if applicable. This information may be required in the request for proposal for inclusion in contracts of lesser dollar value if deemed appropriate.

(1) Technical Proposal.

(i) method by which the offeror proposes to solve the technical problems of the project, other than information to be furnished elsewhere as a part of program or project support plan summaries. (See 3.501(c)(1)(vii) below).

(ii) specification of exceptions to proposed technical requirements;

(iii) statement of background experience in fields relating to the procurement;

(iv) names and resumes of experience of key technical personnel who will be employed on the project and extent to which each will participate in the performance of the project; an organization chart of the segment of offeror's organization which will be directly assigned to the project, listing names and job categories;

(v) description and location of the company-owned research test and production equipment and facilities which will be available for use on the project; separate list of any additional facilities or equipment required in the performance of the work; separate list of existing Government facilities available to the contractor and required for use on the project;

(vi) hourly time estimates (without pricing information) by labor class for each phase or segment of the project; extent to which these estimates are based on the use of employees presently on the offeror's payrolls who will be available for the work as required; indication of number and types of personnel necessary to be hired and arrangements made to obtain them; and

(vii) For negotiated procurements conducted under Source Evaluation Board procedures where detailed program or project support plans will be required as part of the offeror's proposal, and when such plans are not considered to be important discriminators in the evaluation process but only provide technical or management support to the primary product or service being offered, the requirements for these plans shall be described in separate Appendices to the Statement of Work. As part of their original proposal, offerors will be required to submit an estimate of the cost and manpower to perform major tasks under each requirement separately identified, and a summary of the major task elements to perform each requirement. Offerors will also be required to indicate that they understand that a detailed program or project support plan will be ultimately required if they are selected for negotiations, and that such plans will be negotiated into the proposed contract prior to award.

(2) Business Management Proposal.

(i) organization proposed for carrying out the project, including organization charts showing interrelationship of business management, technical management and subcontract management; indication of all levels of operation and management, from lower levels through intermediate management to top level management;

(ii) resume of experience of all key personnel who will conduct the managerial affairs of the project;

(iii) contractual procedures proposed for the project to effect administrative and engineering changes; describing differences from existing procedures;

(iv) extent to which offeror has invested corporate funds in research and development work in the project

area or directly related areas and plans for future expenditures for such work; extent, if any, to which offeror is willing to participate in the cost of the project (see 3.405-3);

(v) statement as to capacity at which company-owned research test, and production equipment and facilities required in the performance of the work are currently working; extent to which such facilities and equipment could handle the additional workload imposed by this project; cost of any additional facilities or equipment required in the performance of the work with information as to whether such additional facilities or equipment will be contractor-furnished or Government-furnished; statement of value of existing Government facilities available to offeror and required for use on the project, showing the Government agencies and facilities contracts involved;

(vi) statement of past performance and experience including:

(A) list of Government contracts in excess of $1,000,000 received in past three years or currently in negotiation involving mainly research and development work, showing each contract number, Government agency placing the contract, type of contract, and brief description of the work;

(B) for each cost-type contract, specify amounts of cost overruns or underruns, reasons therefor, and percentage of fixed fee;

(C) for each contract, give record of contract completion as against completion date anticipated at time of entering into contract, giving explanations for completion delays;

(D) identify and explain any terminations for default or Government convenience;

(vii) balance sheet for offeror's last fiscal year, accompanied by profit and loss statement;

(viii) detailed cost or price proposal, furnished as a separate, detachable element of the business management proposal;

(ix) in soliciting proposals for support services requiring price quotations for a cost reimbursement type contract the request for proposals should set forth available data respecting the quantity and quality of supplies and services required. These data should be set forth in terms of man hours of identifiable categories of labor, including experience and related qualifications, and in terms of quantities of supplies, all exclusive of costs. To be responsive, a proposer must submit a detailed cost or price proposal based on the effort described or estimated in the request for proposals. If the proposer feels that the work can be accomplished more efficiently with organizational plans, staffing, management or equipment other than those indicated in the request for proposal, he may also submit an alternate proposal, supported by a detailed cost or price proposal;

(d) Requests for proposals, which are subject to the

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review and approval of a Source Evaluation Board, should be developed in accordance with the above paragraphs and the requirements of paragraph 403 of the NASA Source Evaluation Board Manual (NHB 5103.6).

(e) Request for proposals for procurements which are subject to Title VI of the Civil Rights Act of 1964 (Public Law 88-352; 42 U.S.C. 2000 d-1), shall include a requirement for obtaining an "Assurance of Compliance" (NASA Form 1206) in accordance with the provisions of paragraph 1.355.

PART 9—PATENTS, DATA, AND COPYRIGHTS

Subpart 1—Innovations, Inventions, and Patents

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Subpart 2—Data and Copyrights

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Subpart 2-Data and Copyrights

9.200 Scope of Subpart. This Subpart sets forth NASA policy, implementing procedures, and contract clauses with respect to acquisition of data, rights in data, and copyrights.

9.201 Definitions. For the purpose of this Subpart, the following terms have the meanings set forth below:

(a) "Data" means recorded information, such as but not limited to writings, drawings, recordings, and pictorial representations, regardless of form or the media on which it may be recorded. The term does not include information incidental to contract administration, such as financial and business reports.

(b) "Computer Software" means data in the form of computer programs, computer data bases, and documentation thereof.

(c) "Subject Data" means data specified to be or which are in fact delivered pursuant to a contract, and data first produced in performance of a contract.

(d) "Protectible Data" means:

(1) Data which constitute a contractor's trade secrets, but only to the extent that such data relate to items, components, or processes, including minor modifications thereof, which were developed at private expense; and

(2) Computer software developed at private expense which has been protected by a contractor from unrestricted use, duplication, or disclosure by others.

However, as to (d)(1) above, the term "protectible data" does not include training manuals, or instructional material for installation, operation, routine maintenance or repair.

(e) "Form, Fit, and Function Data" means data pertaining to items, components, or processes which identify sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements; except that for computer software it means source, function, and performance data.

(f) "Unlimited Rights" means the right to use, duplicate, and disclose, in whole or in part, in any manner and for any purpose whatsoever, and have others so do.

(g) "Limited Rights" means the right to duplicate and use noncomputer software type of protectible data with the express limitation that such data will not be disclosed outside the Government nor used for purposes of manufacture without permission of the contractor; provided, however, that the Government may disclose this data for use by onsite employees of support service contractors where such contractors have agreed to protect this data from unauthorized use or disclosure.

(h) "Restricted Rights" means that the Government may not duplicate, use, nor disclose computer software type of protectible data except as provided in the minimum rights set forth below or such additional rights as may be provided in the contract.

The Government may:

(1) Use computer software with the computer for which it was acquired, including use at any Government installation to which the computer may be transferred;

(2) Use computer software with a backup computer if the computer for which it was acquired is inoperative;

(3) Copy computer software for safekeeping (archives) or backup purposes;

(4) Modify computer software or combine it with other software, subject to the provision that where the derivative software contains portions which remain identifiable as protectible data, such portions shall be subject to the same restricted rights;

(5) Disclose computer software for use by onsite employees of support service contractors, providing such contractors agree to protect such computer software from unauthorized use or disclosure; and

(6) Treat computer software, if it bears a copyright notice, as a published copyrighted work licensed to the Government with minimum rights in accordance with subparagraphs (1) throught (4) above.

9.202 Acquisition of Data and Rights in Data.

9.202-1 Background. In order for NASA to carry out its statutory responsibility to perform research and development in the fields of aeronautics and space and to provide for the widest practicable and appropriate dissemination of the results of these activities, it is necessary that NASA acquire many kinds of data developed under or used in the performance of its contracts. At the same time NASA recognizes that its contractors have a valid economic interest in data resulting from private investment. The protection of this data is desirable in order to encourage qualified contractors to participate in NASA programs. The policies, procedures, and clauses set forth herein strike a balance between NASA's needs and a contractor's equities.

9.202-2 Policy.

(a) Acquisition of Data-General.

(1) Distinction Between Data Acquisition and Data Rights. It is important to recognize and maintain the conceptual distinction between contract provisions whose purpose is to identify data to be delivered or furnished to the Government, and other contract provisions whose purpose is to specify the respective legal rights of the Government and the contractor in such data. Paragraphs (a), (b), and (c) herein pertain to policy dealing with acquisition of data. Paragraphs (d) and (e) pertain to policy dealing with rights in data.

(2) Known Requirements for Data. It is NASA's policy to determine, to the extent feasible, its known requirements for data in time for inclusion in Requests for Proposals and Invitations for Bids. Such requirements for data will be further considered during negotiations and included in any resulting contract.

(3) Optional Data Requirements. Recognizing that NASA's requirements for data may not be determinable fully at the time of contracting, it is NASA's policy

to preserve a contractual right to later acquire additional data when such requirements have been determined.

(b) Limitation on Acquisition.

(1) When privately-developed items, components, or processes are involved in the performance of work under a contract, and the contractor has related protectible data, it is NASA's policy normally to permit the contractor to meet NASA's requirements for data by furnishing form, fit, and function data for such items, components, or processes in lieu of providing the protectible data. This policy of normally permitting the contractor to withhold its protectible data is the primary means by which the contractor may protect its equitable position.

(2) In order to ascertain whether form, fit, and function data will be adequate to satisfy NASA's needs, prospective contractors will be required to identify in their proposals, to the extent feasible, any of the required data which qualifies as protectible data.

The contractor's response will assist NASA in determining, prior to contracting, whether its procurement needs can be satisfied with form, fit, and function data, or whether arrangements must be made for access to such protectible data.

(3) NASA's policy of normally permitting its contractors to furnish form, fit, and function data in lieu of protectible data does not extend to contracts or elements thereof which have as a significant requirement the development of computer software. It is NASA policy in these procurements to require the delivery of all computer software specified in the contract. In those instances where the contractor has a significant equitable position in the computer software, contract provisions may provide for portions of the software to be subject to restricted rights.

(c) Acquisition of Protectible Data. Normally, under NASA's policy, protectible data may be withheld by the contractor, provided that form, fit, and function data is furnished in its place. This policy puts the least burden on the Government in regards to its obligation to safeguard protectible data, and affords the maximum protection to the contractor. Therefore, this is NASA's preferred contracting approach. It is recognized, however, that there will be certain instances where NASA's procurement needs cannot be met unless there is access to a contractor's protectible data. In those special instances it is NASA policy to provide contract provisions which will permit NASA to require delivery of protectible data with limited and/or restricted rights. The Government's agreement to use the protectible data only for authorized purposes constitutes an alternate means by which the contractor may protect its equitable position.

(d) Rights in Data-Government. In general, it is NASA policy to obtain unlimited rights in all subject data. However, if a contractor's protectible data is to

be furnished under contract, it normally may be furnished with limited rights or restricted rights, as appropriate. If greater rights are needed by the Government in such protectible data a separate fair price will be negotiated. In no instance will NASA require a contractor to forfeit its rights to protectible data as a condition of receiving a contract.

While protection is available for data contained in contract proposals during the period of evaluation, it is NASA policy to obtain unlimited rights in the technical data contained in successful proposals. However, such rights normally will not extend to portions of the proposal not contracted for, nor for data which qualifies as protectible data.

NASA reserves the right to correct, cancel, or ignore any unauthorized notice or legend on data received under contracts.

(e) Rights in Data-Contractors. In general, NASA contractors have the right to use, duplicate, and disclose data which they first produce under NASA contracts. Also, NASA contractors normally have the right to withhold and not furnish their protectible data. In those cases where protectible data is to be furnished, NASA contractors have the right to affix a "Restrictive Rights" or a "Limited Rights" notice to such data.

On a case-by-case basis contractors may be permitted to copyright data first produced under a contract. In certain types of procurements contractors will be required to obtain NASA approval prior to publishing or releasing computer software first produced under contract.

(f) Copyright.

(1) Data First Produced Under Contract. Contractors must obtain NASA approval prior to copyrighting data first produced under contract. Approvals will be granted where it is established that such copyright will best serve NASA's statutory obligation to provide for the widest practicable and appropriate dissemination of NASA-developed information. NASA reserves for the Government, and others acting on its behalf, a royalty-free, nonexclusive, irrevocable, worldwide license for Governmental purposes to publish, distribute, translate, copy, exhibit, and perform any such data copyrighted by the contractor.

(2) Data Not First Produced Under Contract. As a general rule, contractors shall not incorporate copyrighted material in subject data not first produced under its contract unless:

(i) the contractor grants to the Government, and others acting on its behalf, without expense to the Government, a royalty-free, nonexclusive, irrevocalbe, worldwide license for Governmental purposes, to publish, distribute, translate, copy, exhibit, and perform such copyrighted subject data; or

(ii) the contractor obtains the written permission of the contracting officer; or

(iii) with respect to computer software type of protectible data, other rights are specified in the contract.

9.202-3 Procedures.

(a) Procedure for Determining NASA's Requirements for Data. As part of determining the contract requirements, the cognizant technical office shall determine what data will be required during contract performance, and when it shall be delivered. These requirements and delivery schedule will be made known to the contracting officer in time for inclusion in requests for proposals and invitations for bids. The requirements may, for example, include progress reports, maintenance manuals, detailed technical drawings, quality assurance plans, and many other kinds of data. It is necessary that all data to be furnished be specified in the contract as a requirement. In order to avoid unnecessary costs, it is also important that the contract requirements for data be limited to the Government's real needs. Thus, the determination of contract requirements for data must be individually considered for each procurement.

(b) Procedure for Considering a Contractor's Request to Copyright. Under NASA's policy, contractors may be granted permission to copyright data first produced under their contracts where such copyright will best serve NASA's statutory obligation to provide for the widest practicable and appropriate dissemination of NASA development information. A contractor must request such permission in writing from the contracting officer. This request shall identify or furnish a copy of the data which he desires to copyright and provide his plans and intentions for publication and dissemination. The contracting officer shall forward the request to the installation patent counsel who, after consultation with appropriate officials, will advise the contracting officer as to whether permission is recommended. Where permission is granted the contractor will be required to include a credit line on the copyrighted material to insure that members of the public as well as interested Government personnel are given notice of Government rights in the published work as provided for in the contract.

NASA normally will not grant permission to the contractor to copyright in the following situations:

(i) the work consists of a report which represents the official views of the agency or which the agency is required to prepare by statute; or

(ii) the work is intended primarily for internal use by the Government; or

(iii) the work is a computer program, computer data base, or documentation relating thereto which NASA intends to disseminate to the public.

(c) Procedure for Determining Need for Including Paragraphs (f) and/or (g) in the "Rights in Data-General" Clause (9.203-3). As explained in 9.202-2(b), NASA contracts normally permit contractors to satisfy contract requirements for data by furnishing form, fit, and function data in lieu of protectible data. However,

where a real need is established for access to a contractor's protectible data, paragraphs (f) and/or (g) of 9.203-3(b) and (c) may be added to the "Rights in Data-General" clause which then permits NASA to call up protectible data under limited rights or restricted rights conditions. To provide visibility, and as an aid in determining when a real need exists, NASA RFP's instruct proposers to state in the proposal that the contract requirements for data have been reviewed, and further, shall either (1) state that none of the required data qualifies as protectible data, or (2) identify which of the required data qualifies as protectible data.

If required data is identified in the proposal as protectible, the cognizant technical officer shall determine whether the contract objectives can be met with form, fit, and function data. If not, the rationale for requiring access to protectible data shall be documented in a request to the installation Procurement Officer for authority to include paragraphs (f) and/or (g) in the "Rights in Data-General" clause. The Procurement Officer, after consulting with patent counsel, may authorize inclusion of one or both paragraphs upon his determination that a real need exists. In any case, the question of whether any of the required data qualifies as protectible data will be specifically discussed during contract negotiations to assure that both parties have a clear understanding of the other's position, and the results of such discussion shall be reflected in the minutes of the negotiation.

(d) Procedure for Acquiring Protectible Data Under Paragraphs (f) and/or (g) of the "Rights in Data-General" Clause (9.203-3). NASA has adopted the "withholding" approach as the primary means for protecting a contractor's protectible data. (See 9.202-2(b) and (c) above). The fact that optional paragraph (f) and/or (g) may be added to the "Rights in Data-General" clause does not change this fact. If a contractor wishes to continue protection of its protectible data, it must still comply with the withholding provisions of paragraph (e) of that clause. Contractors are not authorized to affix a "Limited Rights" notice or a "Restricted Rights" notice of any data unless and until the contracting officer has made a written request pursuant to paragraph (f) and/or (g) for data specifically identified, or the contract specifically provides that the data is subject to limited rights or restricted rights. Marked data submitted under contract without such specific authorizations shall be treated as data with unauthorized notices or legends, and the contractor stands to lose rights in such data. Accordingly, it is important that this procedure be followed carefully.

The acquisition of a contractor's protectible data with limited or restricted rights carries with it an obligation on the part of all NASA employees who may have access to such data to safeguard it against unauthorized use or disclosure. Since the responsibility

also represents an administrative burden, every effort shall be made to satisfy NASA's needs through the use of form, fit, and function data in lieu of a contractor's protectible data. It is encumbent on contracting officers to verify NASA's real need before making a request pursuant to paragraphs (f) and/or (g), and to limit the request to data specifically identified.

(e) Procedure for Acquiring Rights to Data (Technical) in Successful Proposals. To implement NASA's policy of acquiring unlimited rights in the technical data contained in successful proposals, the clause of 9.203-7 shall be included in all contracts, the award of which is based upon a solicited or unsolicited proposal. Prospective contractors are informed of this policy in the RFP (see 3.501(b)(xlv), and during negotiations of a contract on unsolicited proposals, and are advised that if a contract is awarded they are entitled to and may request that certain technical data be excluded from the rights granted to the Government by this clause. Exclusion of proposal data is permissible where the prospective contractor establishes to the contracting officer's satisfaction that portions of such data qualify as "protectible data" as defined in 9.201(d), or that portions of such technical data do not relate directly to or will not be utilized in the work to be funded under the contract. In those instances such data shall be excluded by inserting the appropriate page numbers in the clause. The responsibility for raising the question of possible exclusion of such data and qualifying it rests with the prospective contractor.

In the event it is considered necessary for NASA to have access during contract performance to protectible data excluded from the clause provisions, such access may be obtained under the provisions set forth in 9.203-7(b).

9.203 Clauses.

9.203-1 Overview.

(a) This paragraph contains instructions for selecting the appropriate data clauses for use in NASA contracts. All NASA contracts contain provisions specifying the data (as defined in 9.201(a)) to be furnished thereunder, to the extent that NASA's requirements for data can be determined at the time of contracting. However, when contracting for research and development and related services, usually it is not feasible to determine all the requirements for data at the time of contracting. Thus an "Optional Data Requirements" clause is provided to give NASA an option to require delivery of additional data first produced or specifically used during contract performance. (See 9.203-2 for the use of the "Optional Data Requirements" clause.)

(b) All contracts requiring data to be furnished to NASA require a clause to delineate the rights of both the Government and the contractor in such data. The basic and most frequently used data rights clause is

the "Rights in Data-General" clause set forth in 9.203-3. It is suitable for use in most experimental, developmental, research, or study contracts, as well as contracts for supplies and services which require data to be furnished. Additional paragraphs may also be added to this basic clause to enable access to a contractor's protectible data (as defined in 9.201(d)) under limited rights or restricted rights conditions when there is an established need for such access. See 9.202-3(c) for procedures for use of these additional paragraphs and 9.202-3(d) for procedures for acquiring such protectible data.

(c) Some contracts, however, will require the use of different data rights clauses because of differences in the subject matter of the contract or of different rights needed. Contracts, or portions thereof, which have as a primary purpose or as a signifcant requirement the development of computer software require the use of the "Rights in Data-Special Situations" clause of 9.203-4. Contracts, or portions thereof, for the production of motion pictures, preparation of scripts, musical compositions, sound tracks, video recordings, translations, adaptations, and the like intended for general release to the public require certain release restrictions and indemnity provisions provided by the "Rights in Data-Motion Pictures" clause of 9.203-5. To assure access to data pertaining to potentially hazardous items, the "Rights in Data-Potentially Hazardous Items" clause of 9.203-6 is provided for use in conjunction with the basic clause of 9.203-3, in contracts having items designated therein as potentially hazardous.

(d) To assure an understanding of the rights of the Government and the contractor to the technical data contained in successful proposals, the clause of 9.203-7 is provided.

(e) The clause of 9.203-8 is provided for contracts where all or the preponderance of the work is to be performed outside of the United States.

(f) Special instructions with accompanying rights in data clauses are provided for contracts (1) for purchase of existing books and similar items (9.203-9), (2) for purchase of existing motion pictures or television recordings (9.203-10), and (3) for purchase of existing computer software (9.203-11).

9.203-2 Optional Data Requirements.

The clause set forth below shall be included in experimental, developmental, research, or study contracts. It may also be used in other contracts which have as a significant requirement the first production of data. The installation Procurement Officer is authorized, after consultation with patent counsel, to make changes in the clause to meet special circumstances.

OPTIONAL DATA REQUIREMENTS (JANUARY 1977)

In addition to the data specified elsewhere in this contract to be furnished, the Contracting Officer may at any time during the contract performance or within one year after final payment require the Contractor to furnish any data first produced or specifically used in the performance of this contract or any subcontract hereunder. The terms of the "Rights in Data" clause included in this contract are applicable to data required under this clause. When data is furnished under this clause the Contractor shall be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

9.203-3 Rights in Data-General

(a) The clause set forth below shall be used in all contracts calling for the delivery of data, unless another clause is specifically required by subsequent provisions:

RIGHTS IN DATA - GENERAL (JANUARY 1977)

(a) Definitions.

(1) "Data" means recorded information, such as but not limited to writings, drawings, recordings, and pictorial representations, regardless of form or the media on which it may be recorded. The term does not include information incidental to contract administration, such as financial and business reports.

(2) "Computer Software" means data in the form of computer programs, computer data bases, and documentation thereof.

(3) "Subject Data" means data specified to be or which are in fact delivered pursuant to this contract, and data first produced in performance of this contract.

(4) "Protectible Data" means:

(i) data which constitutes Contractor's trade secrets but only to the extent that such data relates to items, components, or processes including minor modifications thereof, which were developed at private expense; and

(ii) computer software developed at private expense which has been protected by the Contractor from unrestricted use, duplication, or disclosure by others.

However, as to (a)(4)(i) above, the term "Protectible Data" does not include training manuals, or instructional material for installation, operation, routine maintenance or repair.

(5) "Form, Fit, and Function Data" means data pertaining to items, components, or processes which identify sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements; except that for computer software it means source, function, and performance data.

(b) Rights.

(1) The Government shall have the right to use, du-

plicate, and disclose, in whole or in part, in any manner and for any purpose whatsoever, and have others so do, all subject data unless otherwise limited below.

(2) The Government shall have the right at any time to correct, cancel, or ignore any restrictive notice or legend on subject data not authorized by the terms of this contract. Restrictive notices are authorized only in the event paragraphs (f) and/or (g) are included in this contract and the contract specifically provides that data subject to these paragraphs is to be furnished, or the Contracting Officer has made a written request for protectible data pursuant to such paragraphs.

(c) Copyright.

(1) Subject Data First Produced Under This Contract. The Contractor shall not, without prior written permission of the Contracting Officer, establish a claim to statutory copyright in any subject data first produced under this contract. The Government, and others acting on its behalf, shall have a royalty-free, nonexclusive, irrevocable, worldwide license for Governmental purposes to publish, distribute, translate, copy, exhibit, and perform any such data copyrighted by the Contractor. Where the Contractor publishes or releases computer software first produced under this contract without claim of copyright, it shall simultaneously furnish the Contracting Officer with a copy of such software and a statement as to the circumstances of the publication or release.

(2) Subject Data Not First Produced Under This Contract. Except for computer software to be furnished pursuant to paragraph (g) herein, the Contractor shall not incorporate copyrighted data in subject data not first produced under this contract unless:

(i) the Contractor grants to the Government, a royalty-free, nonexclusive, irrevocable, worldwide license for Governmental purposes, to publish, distribute, translate, copy, exhibit, and perform such copyrighted subject data; or

(ii) the Contractor obtains the written permission of the Contracting Officer.

(d) Relationship to Patents. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(e) Withholding of Protectible Data.

(1) Except as provided in (2) below, where data which is specified in the contract to be furnished meets the definition of protectible data in (a)(4) above, the Contractor, if it desires to continue protection of such data, shall withhold such data and not furnish it to the Government under this contract. However, as a condition to withholding, the Contractor must identify the protectible data being withheld, and furnish in lieu thereof form, fit, and function data.

(2) In the event a protectible data acquisition provision is included in this clause (paragraphs (f) and/or (g) below), the Contracting Officer may require the furnishing of protectible data in accordance with the terms of such provisions.

(f) (Reserved).

(g) (Reserved).

(End of clause)

(b) The following paragraph (f) is authorized for insertion in the above clause (either at the time of contracting or subsequently by amendment) where it has been determined pursuant to 9.202-3(c) above that there is a real need for NASA to acquire a contractor's noncomputer software type of protectible data.

(f) Acquisition of Protectible Data-Noncomputer Software. Upon written request of the Contracting Officer for any of the noncomputer software type of data which has been withheld pursuant to paragraph (e) of this clause, the Contractor shall promptly furnish such data. The following notice is authorized to be affixed to the data furnished and the Government will thereafter treat the data in accordance with such notice:

LIMITED RIGHTS NOTICE

This data is a trade secret of _____, and is submitted in confidence under NASA contract No. _____ (and subcontract _____, if appropriate) on _____ (date). It may be duplicated and used by the Government with the express limitation that it will not, without permission of the Contractor, be disclosed outside the Government, or used for purposes of manufacture. However, the Government may disclose this data for use by onsite employees of support service contractors, providing such Contractors have agreed in writing to protect this data from unauthorized use or disclosure. These restrictions shall terminate seven (7) years from the submittal date specified in this notice. This notice shall be marked on any reproduction of this data, in whole or in part.

(c) The following paragraph (g) is authorized for insertion in the above clause (either at the time of contracting or subsequently by amendment) where it has been determined pursuant to 9.202-3(c) above that there is a real need for NASA to acquire a contractor's computer software type of protectible data:

(g) Acquisition of Protectible Data-Computer Software. Upon written request of the Contracting Officer for any computer software which has been withheld pursuant to paragraph (e) of this clause, the Contractor shall promptly furnish such data. The following notice is authorized to be affixed to the data furnished and the Government will thereafter treat the data in accordance with such notice:

PATENTS, DATA AND COPYRIGHTS

RESTRICTED RIGHTS NOTICE

This computer software is the property of _____ and is furnished under NASA contract No._____ (and subcontract _____, if appropriate). It may not be used, duplicated, nor disclosed by the Government except as provided below or as otherwise stated in the contract.

The Government may:

(i) use this computer software with the computer for which it was acquired, including use at any Government installation to which the computer may be transferred;

(ii) use this computer software with a backup computer if the computer for which it was acquired is inoperative;

(iii) copy this computer software for safekeeping (archives) or backup purposes;

(iv) modify this computer software or combine it with other software, subject to the provision that where the derivative software contains portions which remain identifiable as protectible data, such portions shall be subject to the same restricted rights;

(v) disclose this computer software for use by onsite employees of support service contractors providing such contractors agree to protect such computer software from unauthorized use or disclosure; and

(vi) treat this computer software, if it bears a copyright notice, as a published copyrighted work licensed to the Government with minimum rights in accordance with subparagraphs (i) through (iv) above.

Any greater rights which the Government may have acquired in this computer software are stated in the contract. This notice shall be marked on any reproduction of this computer software, in whole or in part.

Where it is impractical to include the above notice on computer software in machine readable form, the following short form notice may be used in lieu thereof:

RESTRICTED RIGHTS NOTICE (SHORT FORM)

Duplication, use, or disclosure is subject to restrictions stated in contract No. _____ with _____ (name of Contractor).

9.203-4 Rights in Data-Special Situations.

(a) The following clause shall be used in lieu of the clause of 9.203-3(a) in contracts having as a principal purpose the development of computer software, and shall also be used in addition to the clause of 9.203-3(a) in contracts which have, as a portion of the total effort, a significant requirement for the development of computer software. In the latter case the contract shall specify which portion of the contract work is covered by which clause.

DATA AND COPYRIGHTS

RIGHTS IN DATA-SPECIAL SITUATIONS (JANUARY 1977)

(a) Definitions.

(1) "Data" means recorded information, such as but not limited to writings, drawings, recordings, and pictorial representations, regardless of form or the media on which it may be recorded. The term does not include information related to contract administration, such as financial and business reports.

(2) "Computer Software" means data in the form of computer programs, computer data bases, and documentation thereof.

(3) "Subject Data" means data specified to be or which are in fact delivered pursuant to this contract, and data first produced in performance of this contract.

(4) (Reserved).

(b) Rights.

(1) The Government shall have the right to use, duplicate, and disclose, in whole or in part, in any manner and for any purpose whatsoever, and have others so do, all subject data unless otherwise limited below.

(2) The Government shall have the right at any time to correct, cancel, or ignore any restrictive notice or legend on subject data not authorized by the terms of this contract. Restrictive notices are authorized only in the event paragraph (g) is included in this clause.

(c) Copyright.

(1) Subject Data First Produced Under This Contract. The Contractor shall not, without prior written permission of the Contracting Officer, (i) establish a claim to statutory copyright in any subject data first produced under this contract, nor (ii) publish or release to others computer software first produced in the performance of this contract. The Government and others acting on its behalf, shall have a royalty-free, nonexclusive, irrevocable, worldwide license for Governmental purposes to publish, distribute, translate, copy, exhibit, and perform any such data copyrighted by the Contractor.

(2) Subject Data Not First Produced Under This Contract. Except for computer software to be furnished pursuant to paragraph (g) herein, the contractor shall not incorporate copyrighted data in subject data not first produced under this contract unless:

(i) the Contractor grants to the Government, and others acting on its behalf, without expense to the Government, a royalty-free, nonexclusive, irrevocable, worldwide license for Governmental purposes, to publish, distribute, translate, copy, exhibit, and perform such copyrighted subject data; or

(ii) the Contractor obtains the written permission of the Contracting Officer.

(d) Relationship to Patents. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(e) (Reserved).

PATENTS, DATA AND COPYRIGHTS

(f) (Reserved).
(g) (Reserved).

(End of clause)

(b) The following paragraphs (a)(4) and (g) are authorized for insertion in the above clause where it has been determined pursuant to 9.202-3(c) above that the computer software to be furnished under a contract includes a contractor's computer software type of protectible data which the contractor wishes to protect:

(a)(4) "Protectible Data" means computer software developed at private expense which has been protected by Contractor from unrestricted use, duplication, or disclosure by others.

(g) Acquisition of Protectible Data-Computer Software. Computer software may be identified in the contract as being subject to this paragraph (g). Provided such data qualifies as protectible data under paragraph (a)(4) and if the Contractor desires to continue protection of such data, the following notice shall be affixed to the data furnished and the Government will thereafter treat the data in accordance with such notice:

RESTRICTED RIGHTS NOTICE

This computer software is the property of _____ and is furnished under NASA contract No. _____ (and subcontract _____, if appropriate). It may not be used, duplicated, nor disclosed by the Government except as provided below or as otherwise stated in the contract.

The Government may:

(i) use this computer software with the computer for which it was acquired, including use at any Government installation to which the computer may be transferred;

(ii) use this computer software with a backup computer if the computer for which it was acquired is inoperative;

(iii) copy this computer software for safekeeping (archives) or backup purposes;

(iv) modify this computer software or combine it with other software, subject to the provision that where the derivative software contains portions which remain identifiable as protectible data, such portions shall be subject to the same restricted rights;

(v) disclose this computer software for use by onsite employees of support service contractors providing such contractors agree to protect such computer software from unauthorized use or disclosure; and

(vi) treat this computer software, if it bears a copyright notice, as a published copyrighted work licensed to the Government with minimum rights in accordance with subparagraphs (i) through (iv) above. Any greater rights which the Government may have acquired in this computer software are stated in the contract.

DATA AND COPYRIGHTS

This notice shall be marked on any reproduction of this computer software, in whole or in part.

Where it is impractical to include the above notice on computer software in machine readable form, the following short form notice may be used in lieu thereof:

RESTRICTED RIGHTS NOTICE (SHORT FORM)

Use, duplication, or disclosure is subject to restrictions stated in contract No. _____ with _____(name of Contractor).

9.203-5 Rights in Data-Production of Motion Pictures. The "Rights in Data-Special Situations" clause of 9.203-4, with the additions of paragraphs (h) and (i) below, shall be used in contracts for the production of motion pictures, preparation of scripts, musical compositions, sound tracks, video recordings, translations, adaptations and the like intended for general release to the public (as opposed to using motion pictures to record scientific and technical data). The clause in 9.203-4 with the addition of paragraphs (h) and (i) below shall also be used in addition to the "Rights in Data-General" clause of 9.203-3(a), where works of the type set forth above are only a portion of the work specified in the contract, in which case the contract shall specify which portion of the contract work is covered by which clause.

(h) Release Restrictions. Unless otherwise specifically provided for by this contract, the Contractor shall not use for purposes other than this contract, nor copy, publish, or release any subject data first produced in the performance of this contract nor authorize others so to do without permission of the Contracting Officer.

(i) Indemnity. The Contractor shall indemnify, and save and hold harmless, the Government, its officers, agents, and employees, acting within the scope of their official duties, and on behalf of the Government, against any liability, including costs and expenses for (i) the violation of proprietary rights, copyright, or right of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under this contract; and (ii) any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply to material furnished to the Contractor by the Government and incorporated in subject data.

9.203-6 Rights in Data-Potentially Hazardous Items. (a) When procuring items designated in accordance with 1.351 as potentially hazardous, the policies and instructions set forth in this paragraph shall prevail over all other policies and instructions contained in

this Subpart 2. The term "items" as used herein includes components of items.

(b) The "Rights in Data-General" clause set forth in 9.203-3(a) shall be included in the contract calling for such items and the following clause shall also be made a part of the contract.

RIGHTS IN DATA-POTENTIALLY HAZARDOUS ITEMS (JANUARY 1977)

(a) Paragraph (e) of the "Rights in Data-General" clause of this contract shall not apply to, and therefore there shall be no withholding of, data identified in the contract as being required to be delivered for items or components of items which are designated as being potentially hazardous.

(b) In the event any of the identified and required data for potentially hazardous items qualifies as protectible data under the definition of (a)(4) of the "Rights in Data-General" clause of this contract, and the Contractor desires to continue protection of such data he shall affix the "Limited Rights" notice set forth in 9.203-3(b).

9.203-7 Rights to Proposal Data (Technical)

(a) The following clause shall be included in all contracts resulting from a solicited or unsolicited proposal. This clause shall not be expanded to cover rights to financial and business information contained in a proposal which information remains under NASA's policy for treatment of privileged business information included in proposals as prescribed in 1.304-4.

RIGHTS TO PROPOSAL DATA (TECHNICAL) (JANUARY 1977)

Except for technical data contained on pages _____, it is agreed that as a condition of the award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have the right to use, duplicate, and disclose and have others so do for any purpose whatsoever, the technical data contained in the proposal upon which this contract is based.

(b) Where it is considered necessary for NASA to have access during contract performance to proposal technical data which qualifies as protectible data (see 9.201(d)), the following provision shall be added to the "Rights to Proposal Data (Technical)" clause:

Technical data on pages _____ shall be subject to the "Limited Rights" notice provided in NASA PR 9.203-3(b), which the Government shall affix to the proposal.

9.203-8 Contracts with Foreign Sources to be Performed Outside the United States.

(a) Except as otherwise provided in 9.203-5 and 9.203-9, 10, 11, in contracts with foreign sources

whereunder the work is to be performed outside the United States, it possessions, and Puerto Rico, insert the following clause when the United States Government is to acquire unlimited rights in all technical data, including reports, drawings, and blueprints, and all computer software, specified to be delivered to the Government.

RIGHTS IN DATA-FOREIGN (JANUARY 1977)

The United States Government may use, duplicate, and disclose, in any manner and for any purpose and have others so do, all information and data, including reports, drawings, blueprints, and computer software, which are specified to be or which are in fact delivered pursuant to this contract.

(b) Where, however, the same rights are to be obtained as would be obtained in contracting with United States firms the clause of 9.203-3 or 9.203-4, or both, as appropriate, shall be included in the contract. The clause or clauses may be modified after consultation with patent counsel, to meet the requirements necessary for and peculiar to a foreign country, provided such modifications are in basic agreement with the policies set forth in 9.202-2.

9.203-9 Contracts for Purchase of Existing Books and Similar Items.

Notwithstanding the instructions of any other paragraph of this Subpart, no contract clause contained in this Subpart need be included in contracts for the separate, sole procurement of data, other than motion pictures or computer software, in the exact form in which such material exists prior to the initiation of a request for purchase (such as the off-the-shelf purchases of existing products) unless the right to reproduce such data is an objective of the contract.

9.203-10 Contracts for Purchase of Existing Motion Pictures or Television Recordings.

(a) The following clause shall be used in contracts exclusively for the procurement of existing motion pictures or television recordings. The Schedule of the contract may set forth limitations consistent with the purposes for which the material covered by the contract is being procured. Examples of these limitations are (i) means of exhibition or transmission, (ii) time, (iii) type of audience, and (iv) geographical location. Paragraph (b) of the clause should be modified after consultation with patent counsel, to make the indemnity coextensive with the rights acquired under paragraph (a) of the clause as limited by the Schedule of the contract.

RIGHTS IN DATA-EXISTING WORKS (JANUARY 1977)

(a) Except as otherwise provided in the Schedule of this contract, the Contractor hereby grants to the Gov-

ernment a royalty-free, nonexclusive, irrevocable license to distribute, perform, use, and exhibit the material called for under this contract for Governmental purposes throughout the world, and to authorize others to do so.

(b) The Contractor shall indemnify, and save and hold harmless the Government, its officers and employees, acting within the scope of their official duties, and on behalf of the Government, against any liability, including costs and expenses for (i) the violation of proprietary rights, copyright, or right of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under this contract; (ii) any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply to material furnished to the Contractor by the Government and incorporated in subject data.

(b) In contracts which call for modification of existing motion pictures or television recordings through editing, translation, or addition of subject matter, the clause in 9.203-5 shall be used to specify the rights of the modification or additional subject matter.

9.203-11 Contracts for the Purchase or Lease of Existing Computer Software.

When purchasing or leasing existing computer software directly, rather than from a Federal Supply Schedule contract, it is important that the contract adequately describe the computer program or the computer data base, the form (tape, punch cards, disk packs) of the program to be delivered, and all the necessary documentation pertaining thereto. The contract should also specify the rights of the Government and any limitations on the right of the Government to use or copy the computer software, such as the physical location, number of uses, or other conditions under which the computer software may be utilized. The provisions of 9.203-3(c) should be used as a guide to assure that the Government obtains the necessary minimum rights to the purchased or leased computer software. The contracting officer shall consult with local patent sounsel in drafting such rights provisions for these contracts.

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